

Response to Office Action mailed September 14, 2007
Application No. 10/671,388 (Docket No. 18,731)
Amendment dated March 14, 2008

REMARKS

Claims 1-16 remain under prosecution in this application for the Examiner's consideration. Claims 17-22 have been withdrawn from consideration.

Pursuant to 37 C.F.R. § 1.116, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested. Applicant acknowledges with thanks the Examiner's withdraw of previous rejections. Nonetheless, Examiner raises the following new grounds of rejection.

1. §103 Rejection

The Patent Office alleges that claims 1-5, 8-9 and 11-12, are rejected under 35 U.S.C. §103(a) as being unpatentable over Heaton (U.S. Patent 2,002,144) in view of Wortzman (U.S. Patent 4,820,508) and further in view of Snyder (U.S. Patent 2,131,077). The Examiner writes that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have used the lip balm composition taught by Wortzman with the devices for applying a lip stick taught by Heaton and Snyder in order to spread a substance on a surface, such as lipstick on the lips.

The references cited, either individually or in combination, can not support a *prima facie* case of obviousness since the references do not teach nor suggest all of the claim elements. See, MPEP §2143 *et seq.*, §2143.03 (All claim limitations must be taught or suggested.). All pending claims require that the device has a first section attached to a second section, with a seam, the first section has a nonwoven material, and the second panel has an elastic nonwoven material. Neither the Heaton nor Snyder patent references describe or suggest a relatively planar body constructed of two parts with nonwoven and elastic nonwoven materials, joined together at a seam. (Specification, p.5, lines 25-34 – p.6, lines 1-7.) Both references describe unitary, cone-shaped finger cots made with either a rubber sheet held in the conical form by an annular ring around the opening as in Heaton, or a thin rigid metal shell with a layer of cotton flock as in Snyder. Snyder has a recess or niche dipple to collect excess lipstick. Designs such as Heaton and Snyder are fundamentally different and distinguishable both in form and materials from that which is claimed. The Patent Office has not show that one of ordinary skill, by merely reading either Heaton or Snyder reference would be inclined to choose to apply the skin composition disclosed in the Wortzman patent. Wortzman teaches a chemical composition for topical application to protect mammalian skin from the deleterious effects of solar radiation. The mere fact that Wortzman discloses a protective composition with some of the same ingredients does not make Applicant's device obvious. One may select many hundreds or thousands of potential skin protective compositions to be used with an applicator. For the foregoing reasons, Applicant submits that the invention as claimed is not obvious in view of the reference cited.

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2. Conclusion


In view of the foregoing, Applicant submits that the pending claims are in condition for allowance.

Applicant believes that the previous two-(2)-month extension of time submitted combined with the additional one-(1)-month extension submitted herewith equaling a three (3) month extension make this Response timely. Should Applicant be in error, please charge any necessary fees that may be due with regard to extension of time to the Deposit Account No. 11-0875 of Kimberly-Clark Worldwide, Inc.

The undersigned may be reached at: (920) 721-4043.

Respectfully submitted,

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CERTIFICATE OF TRANSMISSION

I, Tara Pohlkotte, hereby certify that on March 14, 2008 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

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